

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. HORIZON TELECOM, INC., Respondent.	DOCKET NO. FCU-04-44
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued September 28, 2004)

On August 24, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for proceeding to consider a civil penalty pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution in Docket No. C-04-173, involving Horizon Telecom, Inc. (Horizon), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings, it appears the events to date can be summarized as follows:

On June 30, 2004, Kevin Ehlers of Sioux Rapids, Iowa, submitted a complaint to the Board alleging that Horizon changed his long distance telephone service

without authorization. Mr. Ehlers disputed extra charges applied to certain in-state and out-of-state calls and stated that he would have never agreed to the additional charges. Mr. Ehlers stated that he was told there would be an additional charge of \$2.49 for the longest in-state and out-of-state calls per week. Mr. Ehlers stated that the extra charge was applied to 14 calls on one month's bill and 16 calls on the next month's bill.

Board staff identified the matter as C-04-173 and, pursuant to Board rules, on July 2, 2004, forwarded the complaint to Horizon for response within ten days.

The Board received Horizon's response to the complaint on July 21, 2004. Horizon indicated Mr. Ehlers gave Horizon permission to be his long distance carrier and provided a copy of the tape recording of the verification. Horizon also noted that it canceled the account and credited Mr. Ehlers in the amount of \$175.84 plus tax. Board staff forwarded a copy of the recording to Mr. Ehlers.

In a letter to the Board dated August 4, 2004, Mr. Ehlers stated that he listened to the tape and did not believe it was his voice on the entire tape.

On August 10, 2004, Board staff issued a proposed resolution concluding that the recording was acceptable proof of Mr. Ehlers' authorization for Horizon to charge a set-up fee of \$9.99, with a rate of three cents per minute and fees of \$2.49 for the longest in-state and out-of-state calls each week. Staff found no evidence of splicing and no indication of a muffled or different voice answering "yes" to some of the verifier's questions. Also, staff noted that Horizon canceled the account and credited

Mr. Ehlers for \$175.84 plus tax, thereby satisfying Mr. Ehlers' concern about disputed fees.

In its August 24, 2004, petition, Consumer Advocate asserts that the charges incurred by Mr. Ehlers exceed the maximum authorized level Horizon claims to have verified on the recording and that the representation about the fees for the longest calls was fraudulent and vitiated any authorization Mr. Ehlers may have given to Horizon to switch his long distance carrier. Consumer Advocate also asserts that each unauthorized \$2.49 charge was an unlawful cram.

Consumer Advocate asserts that a civil penalty should be imposed against Horizon to deter future slamming violations. Consumer Advocate asserts that Horizon has a history of prior violation. Consumer Advocate requests that the Board docket this complaint for formal proceeding. Horizon has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule and allow Horizon an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on August 24, 2004, is

granted. File C-04-173 is docketed for formal proceedings, identified as Docket No. FCU-04-44.

2. Horizon Telecom, Inc., is directed to file a response to Consumer Advocate's petition on or before October 27, 2004.

UTILITIES BOARD

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 28th day of September, 2004.